am not satisfied that the allegations are made out by the defendants.

As regards the claim for the price of the new furnace and incidental expenses, I think the plaintiffs are entitled to succeed. Since the plaintiffs are not asking that the price of the furnace supplied be extinguished, the capital cost of that furnace less payment which the plaintiffs had already made, should be a set-off against the price of the new furnace paid by the plaintiffs. Out of this, there is still a balance of $101.38 which the plaintiffs are entitled to receive. I also allow the charges of $400 for gas claimed under item (2). As regards loss of profits, Mr. Reynolds said that the company was unable to use the furnace for a certain period. He quoted certain figures and estimated that the loss was around $200 per day. To my mind, it is for the plaintiffs to produce sufficient evidence upon which the court may reasonably assess the damages. Though it cannot be denied that the plaintiffs did in all probability suffer loss of profits, I am unable, on the material available, to make a conclusive finding that they did in fact suffer loss of profits of a sum of $200 per day. I therefore feel that a sum of $50 per day would be a reasonable sum to be awarded for loss of profits. Under this head I award a sum of $7,000 for loss of profits for the period from 7th April to 1st October. I therefore enter judgment for the plaintiffs for the sum of $7,501.38

As regards costs, the defendants shall pay the plaintiffs' costs of the claim and the defendants shall be entitled to costs on the counter-claim.

Judgment for the plaintiffs on the claim; counter-claim allowed.

Solicitors: *Skrine & Co., Shearn, Delamore & Co.*

TAN HIN JIN & ANOR. v. PRABHULAL G. DOSHI

[F.C. (Azmi L.P., Suffian & Ali F. JJ.) February 12, 1971]

[Kuala Lumpur — Federal Court Civil Appeal No. 97 of 1970]

Administrative Law — Certiorari — Mandamus — Application for — Decision of Appeal Board under Control of Rent Act, 1966 — Whether error of law apparent on the face of the record.

This was an appeal from the decision of Abdul Hamid J. ([1971] 1 M.L.J. 141) dismissing the appellants' application for an order of *certiorari* and of *mandamus*. The appellants sought those remedies in reference to an order of the Appeal Board set up under the Control of Rent Act, 1966. The Rent Tribunal had determined that the fair rent of the premises in question should be $860 a month. The tenant/respondent appealed against this decision to the Appeal Board, who varied the order by reducing the fair rent of the premises to $600 a month. The landlords/appellants then applied to the High Court for the order of *certiorari* and of *mandamus* alleging that there was an error on the face of the record.

Held, dismissing the appeal: (1) in this case there was nothing apparently wrong in the finding of the Appeal Board that the tenant had been spending a considerable amount of money to keep the premises in good condition and in their taking this into consideration;

(2) the record in this, that is, the grounds of decision, did not show that the improvements to the premises had been made with the consent of the landlords and therefore there was no error of law apparent on the face of the record.

Cases referred to:-

(1) *R.* v. *Northumberland Compensation Appeal Tribunal* [1951] 1 All E.R. 268; [1951] 1 K.B. 711, aff. C.A. [1952] 1 K.B. 338.

(2) *Metropolitan Properties Co. Ltd.* v. *Wooldridge & Anor.* (1968) 112 S.J. 862.

FEDERAL COURT.

Kok Wee Kiat for the appellants.

S. Y. Chan for the respondents.

Azmi L.P.: We have dismissed the appeal and here are my reasons.

The appellants are the executors and trustees of the estate of Tan Cheng Tiong deceased, and the owners of certain controlled premises in the Federal capital of Kuala Lumpur. The respondent is the tenant of the said premises.

The Rent Tribunal for the said area, on the application of the appellants determined that the fair rent of the said premises pursuant to the provisions of section 7(vi) of the Control of Rent Act 1966, should be $860 a month.

The tenant was not satisfied with that decision and appealed against it to the Appeal Board, and on 8th December 1969 the Appeal Board varied the said order of the Rent Tribunal by reducing the fair rent of the said premises to $600 a month. There is no further appeal under the provisions of the Act because in section 15 of the Act it says that "any decision made thereon by the Appeal Board shall be final and shall not be questioned by any court."

The landlord then applied to the High Court for an order of *certiorari* and of *mandamus* in reference to the order of the Appeal Board. The opportunity for a decision whether this may be done by reason of the words "and shall not be questioned by any court" was not taken by either side, either before the High Court or before us here. So the matter came before Abdul Hamid J. for a decision only as to whether there was error on the face of the record. The record in this case consists only of the grounds of decision of the board. In *Rex* v. *Northumberland Compensation Appeal Tribunal*,[1] a decision of the King's Bench Division, Lord Goddard C.J. said at page 277 in reference to that case: —

"The result of that clearly seems to me to be that a court before whom this order is brought can examine it. The tribunal has told us what they have taken into account, what they have disregarded, and the contentions which they accepted. They have told us their view of the law, and for the reasons which I gave at the beginning of my judgment this court is of opinion that the construction which they placed on this very complicated set of regulations was wrong. It is perfectly true, as counsel for the tribunal pointed out, that there have been several other cases, principally under the Furnished Houses (Rent Control) Act, 1946, in which the court has refused to grant *certiorari*, but in none of those cases were there speaking orders, or, if there were, the court has proceeded on the same error that the Court of Appeal fell into in the *Racecourse Betting Control Board* case. . . ."

In that case the Divisional Court held that as the Tribunal has stated on the face of the order the grounds on which they have made it and as it appeared that in law these grounds were not such as to warrant the decision to which they had come, *certiorari* would issue to remove the order into the High Court to be quashed. The above decision was affirmed by the Court of Appeal (see [1952] 1 K.B. 338). Singleton L.J. at page 344 said: —

"Before the Divisional Court it was common ground that there was error on the face of the decision given by the tribunal; indeed, it was admitted by Mr. Ashworth that that was the position, though he claimed that it was not the sort of error for which *certiorari* would lie, his contention being that *certiorari* in the case of a tribunal, such as this, went only to defect of jurisdiction. In those circumstances, I do not think that the tribunal ought to be allowed in the Court of Appeal to take the point that there is no error apparent on the face of the decision; there was no mistake or misunderstanding."

The court held in that case that there was error on the face of the decision on the terms of the decision itself.

Denning L.J. (as he then was) discussed the question as to what is meant by the word "record" in the phrase "error of law on the face of the record." At page 352, he said the following after referring to several cases:

"Following these cases, I think the record must contain at least the document which initiates the proceedings; the pleadings, if any; and the adjudication; but not the evidence, nor the reasons, unless the tribunal chooses to incorporate them. If the tribunal does state its reasons, and those reasons are wrong in law, *certiorari* lies to quash the decision."

Morris L.J., however, warned at page 357:

"It is plain that *certiorari* will not issue as the cloak of an appeal in disguise. It does not lie in order to bring up an order or decision for rehearing of the issue raised in the proceedings. It exists to correct error of law where revealed on the face of an order or decision, or irregularity, or absence of, or excess of, jurisdiction where shown. The control is exercised by removing an order or decision, and then by quashing it."

In the instant case the record consists only of the grounds of the decision of the Appeal Board. The court is therefore in a position to discover whether it reveals any error in law and if it finds that there is such an error it may set it aside.

For the purpose of appellants' argument it is necessary only to read the following parts of the decision of the Appeal Board:

(1) "Further it is not disputed that

(i) the said premises are business premises and more than 60 years old.

(ii) the landlord has not carried out any repairs to the said premises.

(iii) the tenant has from time to time carried out substantial repairs and maintained the said premises in a good condition."

(2) "Section 6 of the Act provides that for the purpose of determining the fair rent the following factors shall be taken into consideration:—

(i) the location,

(ii) the age and character,

(iii) the state of repairs,

(iv) whether business or domestic premises,

(v) any improvements made by the tenant with the written consent of the landlord.

The evidence adduced clearly shows that only items (i) and (iv), the location and character of the premises are in favour of the landlord. Under the circumstances we are of the view that the Rent Tribunal had erred in allowing the maximum increase of one hundred per cent and in not giving due consideration to the fact that the premises was over 60 years old and that the tenant had carried out substantial repairs and maintained the premises in a good condition.

In the circumstances we find that the fair rent of the said premises is $600 p.m."

It is the appellants' contention that the Appeal Board was wrong in stating that in the present case only two factors are favourable to the landlord namely, the location of the premises and the fact that it is a business premises. It should also have held that the fact that the premises was in a good state of repair was a factor in favour also of the landlord. The reason given was that section 6 refers to the state of things as at the date of the hearing. That would be the fact in reference to the location of the premises, its age and character, its type, that is, whether it is business or domestic. Then argued the learned counsel, why should the state of repair of the premises be not considered as at the date of the hearing? In this case the Appeal Board had taken into consideration the fact that the tenant had made repairs previous to the date of the hearing. It was submitted therefore that the Appeal Board was wrong in law in so doing.

In reference to paragraph (e) (as to improvements made to the premises by the tenant with the written consent of the landlord), it was argued that this paragraph allows the favourability to the landlord to be whittled down if improvements were made by the tenant with the written consent of the landlord, and there is no evidence to show that there was such written consent given.

We are asked to consider the English case of *Metropolitan Properties Co. Ltd.* v. *Wooldridge & Anor.*(2) because it was suggested that much help can be derived by looking at section 27 of the English Act 1965. It was held by the King's Bench Division that the London Rent Assessment Panel was wrong in law in taking into consideration *inter alia*, the extremely poor interior condition of the flat, and that the landlord had contributed to the state of affairs by failure to carry out their own obligations and to enforce the tenant's repairing covenants. The court held so because section 27(3) of the Act specifically directs that these things shall be disregarded. We have no corresponding provisions to that effect, so I must say I am unable to understand in what way section 27 of the English Act could help us in considering the question before us.

In my view, section 6 of our Act specifically directs that in assessing as to what is the fair rent, the Rent Tribunal or the Appeal Board as the case may be, must consider the five factors mentioned in the section. Surely, the question as to the location of the controlled premises, or its age and character, or its state of repair and so on, must necessarily be substantially a question of fact. In the present case, the Appeal Board found that the tenant had been spending con-

siderable amount of money to keep this old premises in good condition. In my view there is nothing apparently wrong in the board doing so.

In reference to the second question in connection with paragraph (e), we have no means of knowing whether there was evidence or not produced to show that there was any written consent given by the landlord to the tenant. For that reason this court should not consider that question at all.

Ali F.J. concurred.

Suffian F.J.: I agreed to dismiss this appeal and now give my reasons.

To succeed in their application for an order of *certiorari* in the High Court, the landlords had to show that not only had the Appeal Board erred in law but also that the error in law was apparent on the face of the board's order.

It was argued for the landlords that an error of law was apparent on the face of the board's order. The board found factors (a) and (d) specified in section 6 were in favour of the landlords, and therefore it was said that it could be inferred that the board found the other three factors, namely, (b), (c) and (e), were in favour of the tenant, but that the good state of repair of the premises (which was found as a matter of fact by the tribunal and accepted by the board) should have been taken as a factor in favour of the landlords, because factor (e) in section 6 refers to "improvements made by the tenant with the *written consent of the landlords*", and there was no evidence that the improvements made to the premises had been made with such consent.

I could not accept this argument. We had before us only the board's decision, not the evidence that was led before it if any, nor the evidence led before the tribunal. From that decision alone it could not be said that there was evidence before the tribunal that the improvements made to the premises had been made with or without the landlords' consent. I could not therefore detect any error of law apparent on the face of the board's order.

Appeal dismissed.

Solicitors: *Mah & Kok; S. Y. Chan & Co.*

LIAU KIM LIAN v. BAJURIA

[F.C. (Ong C.J. (Malaya), Gill F.J. and Raja Azlan Shah J.) February 27, 1971]

[Penang — Federal Court Civil Appeal No. 52 of 1970]

Practice and Procedure — Costs — Whether interest chargeable on costs awarded against party to an action — R.S.C., 1957, O. 40 r. 11 — Debtors Ordinance, 1957, s. 2.

The respondent to this appeal had appeared on a judgment notice before Ibrahim J. in the High Court at Kota Bharu heard on March 29, 1970, to show cause why he should not to be committed to prison for failing to pay to the appellant a sum of $754.20 in wilful non-compliance with an order of court dated September 14, 1967. This sum consisted entirely of interest on costs which had been awarded against him by an order of the Court of Appeal dated October 21, 1961.

The question for determination was whether interest is chargeable on the amount of costs awarded against a party to an action where there has been delay in payment.

Held, allowing the appeal: (1) upon a true construction of O. 40 r. 11(2), interest is payable where an order directs payment of costs to be taxed;

(2) a judgment for damages to be assessed, or for costs to be taxed, carries interest from the date of entry of judgment and not from the date of assessment or taxation.

Case referred to:-

(1) *Taylor* v. *Roe* [1894] 1 Ch. 413.

FEDERAL COURT.

H. L. Wrigglesworth for the appellant.

Respondent absent.

Gill F.J. (delivering the judgment of the court): The question for determination in this appeal was whether interest is chargeable on the amount of costs awarded against a party to an action, where there has been delay in payment. It arose when the respondent to this appeal appeared on a judgment notice before Ibrahim J. in the High Court at Kota Bharu to show cause why he should not be committed to prison for failing to pay to the appellant a sum of $754.20 in wilful non-compliance with an order of court dated 14th September, 1967. This order, requiring him to settle the judgment debt by instalments at the rate of $100 *per mensem* with effect from 1st October, 1967 and $200 a month from 1st May, 1968, was made on a judgment debtor summons issued against him.

It was common ground that the sum of $754.20 alleged to be due from the respondent as judgment debtor to the appellant as judgment creditor was made up entirely of interest on costs which had been awarded against him by an order of the Court of Appeal dated 21st October, 1961. The Court of Appeal made the order when it dismissed his appeal from a decision of Hepworth J. whereby, on a claim by the present appellant as the plaintiff in the action, judgment was entered in the sum of $8,000 against him as the defendant in the action in his personal capacity and as administrator of the estate of Gol Ahmad deceased. The judgment of Hepworth J., however, was varied so as to make it a judgment only against the defendant personally.

At the hearing of the judgment notice on 29th March, 1970, the judgment debtor was not represented, and all he had to say was that the amount of $754.20 represented interest on costs. Counsel for the creditor submitted that payment of interest on costs was authorised by 0.40 r. 11(2) of the Supreme Court Rules, 1957, but he did not elaborate on it, apart from referring the Court to paragraph 496 of the *English & Empire Digest*, Vol. 30 at page 207 and the commentary on "Interest on costs" under 0.65, r. 1 at page 1859 of the Annual Practice 1959. In the result the learned judge decided that interest was not chargeable on costs so that the whole amount due from the debtor had been settled, and consequently made no order on the judgment notice.